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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

L4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR [illegible]

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Western Service Center, is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's status because of the applicant's criminal record.

On appeal, counsel for the applicant asserted that the applicant has been unsuccessful in his efforts to obtain requested court dispositions regarding his arrests. Counsel also requested a copy of the applicant's legalization file pursuant to the Freedom of Information Act (FOIA). According to the record, counsel's request was complied with on May 7, 1993.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act. An alien is also inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act.

The record reveals that, on February 11, 1980, the applicant was convicted in the County Court of Presidio, Texas, of Possession of Narcotic Drugs, a misdemeanor.

In addition, the record reflects the following charges for which no final dispositions are available:

- November 1969: Disturbing the peace, a violation of section 415 of the California State Penal code;
- November 1969: Traffic Warrant;

- February 29, 1972: Unlawfully Driving a Vehicle Upon a Highway While Under the Influence of Intoxicating Liquor, in Mendota, California – a violation of section 23102(A) of the California State Vehicle Code;

- February 29, 1972: Driving with a Suspended or Revoked License Not Due to Driving Acts, in Fresno, California – a violation of section 14601.1(A) of the California State Vehicle Code; and

- March 21, 1974: Suspicion of Possession of Marijuana / Cultivation of Marijuana, in Fresno, California.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

As previously indicated, on February 11, 1980, the applicant was convicted of narcotic drug possession. Counsel, on appeal, asserts the applicant has been unsuccessful in his efforts at obtaining requested court dispositions regarding his *other* arrests. Accordingly, it cannot be ascertained based on the documentation in the record that the applicant was not convicted of these additional five (5) misdemeanors.

The applicant is ineligible for temporary resident status because of his narcotics convictions. Within the legalization program, there is no waiver available to an alien inadmissible under section 212(a)(2)(A)(i)(II) of the INA except for a single offense of simple possession of thirty grams or less of marijuana. *See* section 245A(d)(2)(B)(ii) of the INA.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.